STATUTORY INSTRUMENTS

2016 No. 1024

The Insolvency (England and Wales) Rules 2016

PART 15

DECISION MAKING

CHAPTER 2

Decision procedures

[Note: a document required by the Act or these Rules must also contain the standard contents set out in Part 1.]

Interpretation

15.2.—(1) In these Rules—

"decision date" means—

(a) in the case of a decision to be made at a meeting, the date of the meeting;

(b) in the case of a decision to be made either by a decision procedure other than a meeting or by the deemed consent procedure, the date the decision is to be made or deemed to have been made;

and a decision falling within paragraph (b) is to be treated as made at 23:59 on the decision date;

"decision procedure" means a qualifying decision procedure or a creditors' decision procedure as prescribed by rule 15.3;

"electronic voting" includes any electronic system which enables a person to vote without the need to attend at a particular location to do so;

"physical meeting" means a meeting as described in section 246ZE(9) or 379ZA(9)(**1**);

"virtual meeting" means a meeting where persons who are not invited to be physically present together may participate in the meeting including communicating directly with all the other participants in the meeting and voting (either directly or via a proxy-holder);

(2) The decision date is to be set at the discretion of the convener, but must be not less than 14 days from the date of delivery of the notice, except where the table in rule 15.11 requires a different period or the court directs otherwise.

(3) The rules in Chapters 2 to 11 about decision procedures of creditors apply with any necessary modifications to decision making by contributories.

(4) In particular, in place of the requirement for percentages or majorities in decision making by creditors to be determined by value, where the procedure seeks a decision from contributories value must be determined on the percentage of voting rights in accordance with rule 15.39.

(**1**) Section 246ZE is inserted by section 122 of the Small Business, Enterprise and Employment Act 2015 (c.26) and section 378ZA is inserted by section 123 of the same Act.

The prescribed decision procedures

[Note: under sections 246ZE and 379ZA a decision may not be made by a creditors' meeting (a physical meeting) unless the prescribed proportion of the creditors request in writing that the decision be made by such a meeting.]

15.3. The following decision procedures are prescribed as decision procedures under sections 246ZE and 379ZA by which a convener may seek a decision under the Act or these Rules from creditors—

(a) correspondence;

(b) electronic voting;

(c) virtual meeting;

(d) physical meeting; or

(e) any other decision making procedure which enables all creditors who are entitled to participate in the making of the decision to participate equally.

Electronic voting

15.4. Where the decision procedure uses electronic voting—

(a) the notice delivered to creditors must give them any necessary information as to how to access the voting system including any password required;

(b) except where electronic voting is being used at a meeting, the voting system must be a system capable of enabling a creditor to vote at any time between the notice being delivered and the decision date; and

(c) in the course of a vote the voting system must not provide any creditor with information concerning the vote cast by any other creditor.

Virtual meetings

15.5. Where the decision procedure uses a virtual meeting the notice delivered to creditors must contain—

(a) any necessary information as to how to access the virtual meeting including any telephone number, access code or password required; and

(b) a statement that the meeting may be suspended or adjourned by the chair of the meeting (and must be adjourned if it is so resolved at the meeting).

Physical meetings

15.6.—(1) A request for a physical meeting may be made before or after the notice of the decision procedure or deemed consent procedure has been delivered, but must be made not later than five business days after the date on which the convener delivered the notice of the decision procedure or deemed consent procedure unless these Rules provide to the contrary.

(2) It is the convener's responsibility to check whether any requests for a physical meeting are submitted before the deadline and if so whether in aggregate they meet or surpass one of the thresholds requiring a physical meeting under sections 246ZE(7) or 379ZA(7).

(3) Where the prescribed proportion of creditors require a physical meeting the convener must summon the meeting by giving notice which complies with rule 15.8 so far as applicable and which must also contain a statement that the meeting may be suspended or adjourned by the chair of the meeting (and must be adjourned if it is so resolved at the meeting).

(4) In addition, the notice under paragraph (3) must inform the creditors that as a result of the requirement to hold a physical meeting the original decision procedure or the deemed consent procedure is superseded.

(5) The convener must send the notice under paragraph (3) not later than three business days after one of the thresholds requiring a physical meeting has been met or surpassed.

(6) The convener—

(a) may permit a creditor to attend a physical meeting remotely if the convener receives a request to do so in advance of the meeting; and

(b) must include in the notice of the meeting a statement explaining the convener's discretion to permit remote attendance.

(7) In this rule, attending a physical meeting "remotely" means attending and being able to participate in the meeting without being in the place where the meeting is being held.

Deemed consent (sections 246ZF and 379ZB)

[Note: the deemed consent procedure cannot be used to make a decision on remuneration of any person, or where the Act, these Rules or any other legislation requires a decision to be made by a decision procedure.]

15.7.—(1) This rule makes further provision about the deemed consent procedure to that set out in sections 246ZF and 379ZB(**2**).

(2) A notice seeking deemed consent must, in addition to the requirements of section 246ZF or 379ZB (as applicable) comply with the requirements of rule 15.8 so far as applicable and must also contain—

(a) a statement that in order to object to the proposed decision a creditor must have delivered a notice, stating that the creditor so objects, to the convener not later than the decision date together with a proof in respect of the creditor's claim in accordance with these Rules failing which the objection will be disregarded;

(b) a statement that it is the convener's responsibility to aggregate any objections to see if the threshold is met for the decision to be taken as not having been made; and

(c) a statement that if the threshold is met the deemed consent procedure will terminate without a decision being made and if a decision is sought again on the same matter it will be sought by a decision procedure.

(3) In this rule, the threshold is met where the appropriate number of relevant creditors (as defined in sections 246ZF and 379ZB) have objected to the proposed decision.

(4) For the purpose of aggregating objections, the convener may presume the value of relevant creditors' claims to be the value of claims by those creditors who, in the convener's view, would have been entitled to vote had the decision been sought by a decision procedure in accordance with this Part, even where those creditors had not already met the criteria for such entitlement to vote.

(5) The provisions of rules 15.31(2) (calculation of voting rights), 15.32 (calculation of voting rights: special cases) and 15.33 (procedure for admitting creditors' claims for voting) apply to the admission or rejection of a claim for the purpose of the convener deciding whether or not an objection should count towards the total aggregated objections.

(6) A decision of the convener on the aggregation of objections under this rule is subject to appeal under rule 15.35 as if it were a decision under Chapter 8 of this Part.

(**2**) Section 246ZF is inserted by section 122 of the Small Business, Enterprise and Employment Act 2015 (c.26) and section 379ZB is inserted by section 123 of that Act.